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Concealment of Birth: Time to Repeal a 200-Year-Old "Convenient Stop-Gap"?

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Introduction

The criminal offence of concealment of birth (concealment) prohibits the secret disposal of the dead body of a child in order to conceal knowledge of that child's birth under English and Welsh criminal law.[1] Most prosecutions are of women who have concealed or denied their pregnancy, then given birth alone, with the child dying around the time of birth, and the woman disposing of the body without informing another person of the existence of the child. The offence is closely connected to newborn infant homicide and defendants are often suspected of being responsible for the child's death. While the offence can be committed by anyone, the defendant is most often the birth mother.[2] The offence is rarely prosecuted with only four convictions between 2010 and 2014 (Milne 2017), and since 2002 only one person has received an immediate custodial sentence.[3] However, despite the small number of convictions and nature of the sentence, the offence is significant, particularly when analysed from a feminist perspective. Beyond the few women who will become subject to this criminal offence, concealment has significance for wider society as it illustrates the entrenched views of motherhood and appropriate maternal behaviour that continue to perpetuate in society today.

The offence is historical, first formally enacted in 1803 when it was only applicable to unmarried women. Since creation, concealment has been subject to criticism (Williams 1958; Sheldon 2016). Davies (1937 213) referred to the offence as a "convenient stop-gap", which allowed women to be punished even if homicide could not be proven. In spite of such criticism,

[1] Offences Against the Person Act 1861, s 60; *R v Rosenberg* [1906] 70 JP 264.

[2] Since 2000 only one man was convicted of the offence alongside the birth mother. All other convictions have been of the birth mother (Milne 2017).

[3] In 2017 a woman was jailed for one year (Corken and Naylor 2017).

the offence has received little public or political scrutiny, and was excluded from the Law Commission's (2014) examination of other offences within the Offences Against the Person Act 1861 (OAPA).[4]

This paper offers the first assessment of concealment from a feminist perspective, considering the offence as an example of gender-based injustice experienced by women whose behaviour is deemed to require criminal sanction. As with abortion,[5] concealment provides gendered moral judgement of women's behaviour. Analysis of the offence illustrates how judgements of women's characters impacts the creation, continued existence and application of criminal law. In this respect, feminist researchers and activists need to raise awareness of such forms of structural prejudice that exist within law, even if only directly impacting a small number of women (Fletcher 2015). Through analysis of three contemporary cases of concealment, and the historic legacy of the offence, this paper considers the nature of concealment – how it is used by prosecutors to convict women of an offence where murder is suspected but cannot be proven, and how it is used to sanction the behaviour of women who fail to meet idealised images of femininity and motherhood. First, I will outline the elements of the offence and summarise the case studies. I will then go on to evaluate the historic origins of concealment and how the offence is used today, exemplifying an example of gendered injustice. I will conclude by outlining why the offence of concealment of birth has no further place in English and Welsh criminal law.

The Offence

To commit the offence of concealment, the defendant must secretly dispose of the body of a child; the child must have developed sufficiently *in utero* to have a fair chance of surviving

[4] Concealment was excluded, despite the offence containing the same flaws identified with the statute more generally as the offence "raise[ed] issues going well beyond the law of offences against the person" (2014, 53-4).

[5] OAPA, s 58; Abortion Act 1967. See Sheldon (2016).

outside the womb.[6] The child need not have been born alive, but if it was, then it must be dead prior to the concealment. A secret disposal of the body is defined as a body being placed in a location where it is unlikely to be found; a secluded place infrequently visited, for example at the top of a mountain, or inside a wardrobe that is inaccessible to others.[7] The *mens rea* of the offence is to endeavour to conceal the birth of a child. The concealment is from the world at large, not from particular individuals.[8] The offence is not concerned with how the child dies and so has been committed in circumstances where a child is stillborn, born alive and dies through no fault of the pregnant woman or a third party, or born alive and killed through an act or omission. As such, the offence can be charged in conjunction with a homicide offence and an offence against the person, as well as the unlawful procuring of a miscarriage[9] and child destruction.[10] The reason for concealing the birth, and subsequently the dead body, are not of importance to the offence. The maximum sentence is imprisonment for two years. Concealment is not unique to England and Wales; similar offences were enacted in former British colonies.

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[6] In *R v Berriman* [1854] 6 Cox CC 388 and *R v Hewitt*, *R* v *Smith* [1866] 4 F & F 1101 it was ruled that a child born before the seventh gestational month would be unlikely to be born alive and so concealment had not been committed. Medical advances have resulted in the point of viability in the UK being classified as 24 gestational weeks. As such, while there is no legal authority on this point, it is probable that the law of concealment would not come into effect prior to this point in pregnancy. This assessment would be in line with the legal definition of a stillbirth (Still-Birth (Definition) Act 1992, s 1). If the foetus dies before being fully born prior to the pregnancy reaching 24 gestational weeks this is considered to be a miscarriage rather than a stillbirth. As it is not necessary to register a miscarriage, it seems unlikely that concealment could be applied in such instances of foetal death.

[7] *R v Brown* [1870] LR 1 CCR 244. See also *R v Waterage* [1846] 1 Cox CC 338; *R v Sleep* [1864] 9 Cox CC 559; *R v George* [1868] 11 Cox CC 41; *R v Cook* [1870] 11 Cox CC 542.

[8] *R v Higley* [1830] 4 C & P 366; *R v Morris* [1848] 2 Cox CC 489.

[9] OAPA, s 58.

[10] Infant Life (Preservation) Act 1929, s 1.

For example, in Massachusetts, USA, it is a criminal offence to conceal the death of an infant born 'out of wedlock'.[11]

Cases

To assess contemporary use of concealment, I present analysis of court transcripts of sentencing hearings of three women convicted of the offence in England and Wales between 2010 and 2014. These cases were analysed as part of a wider project (Milne 2017), which examined responses by criminal justice in cases where women were suspected of causing, or attempting to cause, the death of their newborn children, and convicted of offences related to this suspicion.[12] Through analysis of media reporting and Serious Case Reviews,[13] fourteen cases were identified, and transcripts were available in seven,[14] with three of those seven cases resulting in concealment convictions.[15] All seven transcripts were analysed in two ways for different purposes. Firstly, for their content, to consider what was said about the women within the setting of the court hearing. This analysis was completed using thematic analysis to draw

[11] Massachusetts General Law c 272, s 22. The offence has not been committed if the child is born to a married woman.

[12] Ethical approval for the study was obtained from the Department of Sociology at the University of Essex and the research conformed to the guidelines outlined in the British Sociological Association's Statement of Ethical Practice.

[13] Review evaluating individual and agency practice where a child has died, and abuse or neglect are known or suspected.

[14] Lack of information to locate the cases meant three were excluded, and a further four were excluded as the transcripts were unavailable due to the tapes being destroyed.

[15] In the other four cases, women were convicted of Infanticide, Procuring a Miscarriage and Child Cruelty. A further case of concealment was identified in the initial sample but could not be included due to the tapes of the transcripts having been destroyed.

meaning from the content of the sentence hearing as a reflection of the situations and events they depict (Spencer et al. 2013). The second analysis considered how the law was utilised in each case, behaviours deemed to warrant criminalisation and the offences used to secure a conviction. This paper is based on data from both forms of analysis, relating specifically to the cases where concealment convictions were secured.[16] As these cases have not been reported, and in line with the permission to view the transcripts granted by the courts, I have used pseudonyms and withheld identifying details. The three women convicted are Hannah, Lily and Sally.

Hannah was in her mid-twenties when she discovered she was pregnant. She was unable to terminate the pregnancy due to being over the 24-week legal limit to access an abortion on the grounds that 'the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family'.[17] Consequently, she continued her pregnancy to full-term, concealing her condition from her family and friends. She gave birth to the child at home in her bedroom. The child was born alive and lived for between five minutes and two hours. Hannah maintains she passed out following the delivery and that the baby died before she regained consciousness. The cause of death could not be ascertained. Hannah left the baby in a friend's front garden and resumed her daily activities. The body was found, and Hannah was later identified by the police through the DNA of the baby's father who advised that Hannah was the mother. After initially being arrested for murder, Hannah was later charged with concealment and child cruelty due to not seeking medical assistance for the child, and pleaded

[16] Due to the analysis being conducted over all seven cases, it is not possible to present the themes identified only in relation to concealment cases, as the themes would have limited meaning outside the context of the wider project.

[17] Abortion Act 1967, s 1(1)(a).

guilty to both. During her sentencing hearing, both the prosecution and the defence made it clear that Hannah had believed she could not have a baby 'out of wedlock' due to the expectations of her family, based on their cultural beliefs, the prosecution arguing that this was the reason she had kept her pregnancy secret and had not sought medical assistance for the child. In contrast, the defence emphasised the impact of family and cultural pressures on Hannah's situation, and so her decision to keep her pregnancy a secret, "So the options that are open to most of us, should we find ourselves in this situation, were simply not open to her". The defence drew on written evidence from a psychiatrist to support their case, noting Hannah experienced "severe, moderate to severe, symptoms of depression, anxiety", in part due to the "pressure exerted by cultural norms". In sentencing, the judge was satisfied that the two offences crossed the custody threshold and that a non-custodial sentence could not be justified. Hannah was sentenced for both offences to imprisonment for 26-weeks, which was suspended for two years. The condition of the suspension was a 12-month supervision order and directions for psychological interventions.

Lily, a woman in her mid-thirties, was living in an abusive and violent relationship when she discovered she was pregnant. Unable to attend an appointment to access an abortion due to her partner preventing her from leaving the house, Lily continued her pregnancy without obtaining medical assistance. During the sentencing hearing it was reported that Lily's partner claimed to be unaware that she was pregnant, despite her pregnancy being visible to other people. After giving birth alone, which Lily states occurred following an assault to the stomach by her partner, Lily buried the baby's body in the garden of the house in which she was living at the time. Four years later the body was found, and several years after that, Lily alerted the police that she was the mother following a call for witnesses. Due to the decomposed state of the body, it was not possible to determine if the child had been born dead or alive, but Lily maintained that the child had been stillborn. It is not clear from the transcript which offence(s)

Lily was originally suspected of committing, but she appeared in court charged with offences on two indictments; the first had two counts – concealment and preventing the lawful burial of the corpse,[18] and the second indictment had ten counts relating to dishonesty and fraudulent offences. Lily pleaded guilty to all counts. In sentencing, the judge outlined that Lily's offences warranted a two-year prison sentence, which would be reduced by one-third due to her early guilty plea. However, the judge ruled that due to having been imprisoned for 10 days upon arrest, and curfew and tagging prior to sentencing, Lily would be granted a further reduction of 166 days and so would only be returning to prison for, "…a couple of months, and that in the end does not seem to me to be a productive exercise..." As such, Lily was sentenced to a community order of 12 months with a supervision requirement for that period. In sentencing, the judge favoured the arguments put forward by the defence, that Lily's offending had been a consequence of her relationship with her abusive partner,

> The Prosecution have suggested that whereas your relationship was a stormy one, signifying as it were a mutual tendency to unruly behaviour and disputation, there is overwhelming evidence in my judgment that you were subject to serious and sustained domestic violence… his violence and behaviour in the relationship must have had to do with your initiations into crime, for until you met him you had not committed an offence.

There is no information available to suggest Lily's partner was prosecuted for the violence and abuse committed against Lily, including the assault that allegedly resulted in pre-term labour.

Over a ten-year period, Sally experienced four pregnancies, receiving no medical care at any stage of each pregnancy. Following the birth of each child she hid their bodies in the wardrobe in her bedroom. At the time of the pregnancies, Sally was in her thirties, living in

[18] A common law offence discussed below.

social housing and raising her children alone. Due to the length of time between the birth of the children and discovery of their bodies, it was not possible to determine whether they had been born alive and, if so, how they had died. Sally stated that they had been stillborn, and this was the basis of the prosecution's case. She is described in the sentencing remarks as leading a "chaotic and dysfunctional lifestyle", frequently abusing alcohol, using cannabis, and having sexual relationships with numerous men. Following discovery of the bodies by a family member, Sally was prosecuted for, and pleaded guilty to, four counts of concealing birth. For each offence, Sally was sentenced to a community order for two years, subject to supervision for the whole period. While the judge was of the opinion that the threshold for custody had been passed, the mitigation presented (Sally's age meaning "there is no risk of any future similar activity"; being a person of good character; and the trauma of "suffering four stillborn deaths and hav[ing] had to live with the consequences of those deaths and the concealment which must have caused [her] many anxious and distressing moments") meant the judge was satisfied that a suspended sentence was appropriate.[19]

Crisis Pregnancy

The three women's responses to their pregnancies and the birth of their children may seem unusual, but such behaviour is by no means rare,[20] and needs to be understood as responding to a 'crisis pregnancy'. By using the term 'crisis pregnancy' I am referring to an instance where a woman feels unable to determine how to approach her pregnancy and what decisions to make about the future of the pregnancy/foetus/child, causing her a crisis. Examples of such a situation

[19] I was only granted permission to view the judge's sentencing remarks for Sally's sentencing hearing. Therefore, I have fewer details of this case than Hannah's and Lily's.

[20] It is estimated that, in England and Wales, approximately 280 pregnancies are concealed/denied each year, with at least seven of those cases resulting in the death of the child around the time of birth (Milne 2017).

are that the woman may be terrified of her parents finding out she is pregnant, particularly if she is very young; she may be in an abusive relationship and therefore not be able to seek medical assistance to end the pregnancy; or the knowledge of the pregnancy may panic her to such an extent that she feels unable to respond to the pregnancy. Such experiences of pregnancy often result in a woman concealing and/or denying her pregnancy from herself and/or the people around her.[21] The consequence of the concealment/denial is that the expected symptoms and bodily changes of pregnancy can be misinterpreted, significantly reduced or absent (Brezinka et al. 1994). Crisis pregnancy should not be assumed to be an unwanted pregnancy (Vellut et al. 2012), and an unwanted pregnancy is not necessarily cause for crisis if adequate and safe means to end that pregnancy are available and easily accessible.[22]

Concealment/denial is most readily conceptualised as a 'reproductive dysfunction' (Beier et al. 2006), but as Marshall (2012) argues, the point of discovering a pregnancy, and accepting that pregnancy with the intention to make decisions about the future, can be perceived as a choice. Using this logic, not acknowledging a pregnancy and determining a response can also be seen as a choice, even if in making it a woman is "regarded as powerless and paralysed" (2012, 332).[23] A further aspect of concealed/denied pregnancy is that such

[21] There is dispute in the literature as to whether a person can be unaware of their pregnancy, and therefore whether it is indeed a denial or a conscious decision to conceal. Analysis of this literature would suggest that concealment and denial cannot be easily separated, and that women may experience both during pregnancy (Amon et al. 2012; Beier et al. 2006; Brezinka et al. 1994; Spinelli 2001). I find it more helpful to refer to the experience as 'concealed/denied pregnancy', as this captures the blurred boundaries in terms of terminology and the lived experience.

[22] With thanks to Professor Sally Sheldon for this important point.

[23] Marshall goes on to argue that women who decide to give up a child for adoption are often confronted with arguments that they will regret their choice, or that the choice is not *natural*. On this basis, Marshall argues that women's decisions are perceived as inauthentic and therefore impermissible. While the circumstances of giving

experiences of pregnancy are considered to be risk factors for neonaticide. However, as Vellut et al. (2012) and Milne (2017) have argued, the connection is given too much weight, and often there is conflation between concealed/denied pregnancies, which are neither uncommon nor likely to end in neonaticide, and neonaticide, which is very rare and is almost always preceded by a concealed/denied pregnancy. Furthermore, while a concealed/denied pregnancy may occasionally result in the death of the child, there is very limited evidence to support the idea that a woman has purposefully hidden her pregnancy to kill the child. Research that considers the circumstances and motives of neonaticide has concluded that women are mostly responding to the situations in their lives which mean they do not feel able to reveal their pregnancy, even to themselves. For example, Beyer et al. (2008) argue that women's actions or inactions during pregnancy and at the time of birth are often motivated by fear, associated with shame and guilt at being pregnant, and concern about the reaction of parents, partners and others if the pregnancy is discovered. Similarly, Oberman (2003) argues that maternal filicide is deeply embedded in, and responsive to, the societies in which it occurs.

Concealing Birth: An Age-Old Concern

To appreciate the gendered injustice of concealment, it is necessary to explore the history of the offence. Concealment has its origins in the 1624 statute *An Act to Prevent the Destroying and Murthering of Bastard Children*. The legislation removed, from the Crown, the burden of proving live birth and separate existence of a newborn child in cases where the mother was

a child up for adoption are different from the process through which a pregnancy is concealed/denied, and I do not wish to conflate the two, there are striking similarities in terms of societal responses to women's choices in these circumstances; perceptions that concealment/denial of pregnancy, or giving a child up for adoption, for *selfish* reasons stem from ideologies relating to motherhood and women's roles as mothers, see Douglas and Michaels (2005) and Silva (1996).

unmarried and had concealed the death of her child. To prove her innocence, a woman had to provide one witness to testify that stillbirth had occurred. Without such evidence, the accused would be sentenced to death "as in the case of murder", whether the child "were borne alive or not". Prior to this, a murder conviction could only be obtained, regardless of the defendant's marital status, if it could be proven that the child was born alive; as this was difficult to prove, convictions were hard to secure. The requirement for live birth to be proven is a facet of English law that is still in place today, as to be recognised as a legal person who enjoys all protections of the law, a person must have a separate existence, and thus be a "reasonable creature in *Rerum natura* [in existence]" (Coke 1681 50-1). If it can be proven that a child was alive upon its entire body being expelled from the birth canal, and had independent circulation and breathed after birth,[24] it is possible to convict the perpetrator of an offence against the person or a homicide offence, if that child is then killed or allowed to die. Without proof of live birth, such criminal offences cannot be drawn upon.

While securing more convictions may have been the driver for creation of the Act, the context of the statute lies in political, legal and public concern with 'bastardy' under newly reformed poor laws (Beattie 1986; Jackson 1996). Parents of illegitimate children were fined and women who refused to name the father were subject to corporal punishment and imprisonment. During this period, there was little tolerance of unmarried mothers, who could expect to lose employment and have limited prospects of finding future work. By placing the burden of proving the child was born dead upon the accused woman, the 1624 statute facilitated bringing criminal sanctions against unmarried women. The significance of increasing the ease of prosecution was due to the perception that unmarried women were attempting to escape punishment under both the poor law and the common law offence of murder by hiding their

[24] *R v Poullton* [1832] 5 C&P 329; *R v Enoch* [1833] 5 C&P 539; *R v Reeves* [1839] 9 C&P 25; *R v Brain* [1834] C&P 349.

pregnancy, killing the child following birth and then claiming it had been stillborn. Following enactment of the 1624 legislation, evidence of concealment of the birth and death of an illegitimate child provided "almost conclusive evidence of the child's being murdered by its mother" (Blackstone 1791, 198).

The nature of the 1624 Act and subsequent prosecutions had a clear moral focus. While the practice of concealing a pregnancy was common to all women during this period, marital status had a fundamental impact upon how a woman who concealed pregnancy was treated by the community. While the killing of both legitimate and illegitimate newborn children persisted, unwed women were the focus of prosecutions, while married people were, mostly, afforded privacy to decide the size of their family, allowing unwanted children to die; a historic practice that was still tolerated, albeit conducted discreetly (Rapaport 2006). Such disparity in behaviour supports the conclusion that the 1624 statute and subsequent prosecutions reflected concern over sexual morality and regulation of the female body, not the wellbeing of newborn children (Jackson 1996).

The initial increase in convictions that followed the 1624 Act were quickly mitigated, and by the second half of the eighteenth century unmarried women were more often tried under the principles of presumed dead at birth, requiring evidence of live birth and murder to secure a conviction (Beattie 1986; Jackson 1996). The subsequent low conviction rates resulted in concern by political and legal commenters that, once again, women were getting away with the murder of their illegitimate infants. To address this perceived weakness in the law, the Lord Chief Justice introduced a Bill in 1803, repealing the 1624 Act, formally reinstating the presumption of dead at birth for unmarried women, and creating the offence of concealment,

> …if any Woman be delivered of any Issue of her Body, Male or Female, which being born alive, should by the Laws of this Realm be a Bastard, and that she

> endeavour… to conceal the Death thereof… in every such Case the said Mother shall suffer Death as in case of Murder.[25]

The proposal that concealment would become a new capital offence suggests that the principles of the 1624 Act remained – unmarried women who concealed their pregnancies, followed by the death of the infant, whose body they then concealed, were presumed to have killed the child and would be executed as if they had, unless they could prove the child had been stillborn. However, concealment did not become a new capital punishment, as amendments made to the Bill included reduction of the maximum sentence to imprisonment for two years.[26]

While the punishment was far less severe than originally proposed, the offence provided means to prosecute women whose behaviour led to a suspected, but unproven, homicide. Concealment was not a substantive offence at this point and a woman could only be convicted of concealment if she had been tried for murder. In such cases the jury could rule that she was not guilty of murder, but guilty of concealment. The focus on unmarried women, rather than all women, suggests this legislation was still as much about punishing women deemed to be sexually promiscuous, as it was attempting to gain a conviction when evidence was lacking. Concealment continued to be viewed as evidence of further wrong-doing, and so deserving punishment. The change in law made the behaviour criminal for only a select group of the population – unmarried women.

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[25] House of Lords Sessional Papers (1714-1805). *A Bill, intituled, an Act for the further prevention of malicious shooting, stabbing, cutting, wounding, and poisoning, and also the malicious setting fire to buildings; and also for repealing a certain Act, made in the first year of the late King James the First, intituled, an act to prevent the destroying and murthering of bastard children, and for substituting other provisions in lieu of the same.* v1. 3 December 1802 to 1 July 1803. 117-20.

[26] No records exist of discussions that led to the changes to the Bill; Jackson (1996) concludes from his research that the precise origins of the final construction of the 1803 status are unknown.

The offence of concealment was amended twice during the nineteenth century. Firstly in 1828, when it became a substantive criminal offence which did not rely upon a charge of murder, and could be applied to any woman, regardless of her marital status.[27] Parliamentary debates relating to the change in the offence illustrate that it was believed that married women might be as likely to conceal the birth and death of a newborn child if the circumstances of the pregnancy were undesirable, such as due to an extra-marital affair.[28] Rapaport (2006) argues that married women became subject to the law partly due to growing concern over children and the apparent hypocrisy of exempting 'respectable' women from the reach of the law, but, more importantly, due to growing focus upon motherhood as a sign of womanly virtue, in conjunction with chastity (Davidoff and Hall 1987). The second change to the law occurred in 1861, when the offence was amended to include *any person* who endeavours to conceal birth.[29] It is under this legislation that the offence of concealment still operates today. However, it is no longer possible to be convicted of concealment following a not guilty verdict on an indictment of murder.[30] A concealment conviction can only be obtained following indictment for that offence.

Concealment Today

As outlined in the historical account of the offence, concealment has been used as a means to prosecute women when homicide is suspected, but cannot be proven. Analysis of contemporary use of the offence would suggest that prosecutors continue to use concealment for this purpose, for example, in Lily's case. As the body of her child was not discovered until four years after

[27] Offences Against the Person Act 1828.

[28] Hansard [HC Deb] 05 May 1828, Home Secretary, Sir Robert Peel. vol 19, col 353.

[29] OAPA, s 60. No debate about the change in the offence occurred in Parliament.

[30] Criminal Law Act 1967, s 2 13(1)(a).

the birth, it was not possible to determine if the child had been born alive due to the decomposed state of the body. Despite no evidence of live birth, which would have supported a belief that Lily had harmed or caused the death of the child, during the sentencing hearing the prosecution suggested Lily's decision to bury the body of her baby may have been made to hide evidence that the child had been born alive. As the judge surmised, "There has been a veiled suggestion in the case, and I put it no higher than that, that there may have been something suspicious about the birth and your subsequent behaviour". The prosecution also made several references to the fact that Lily had not sought medical assistance, despite being "injured badly", and that following the birth "she had been bleeding a lot but had sought no medical assistance". The judge acknowledged this suspicion during sentencing, but concluded, "You were never charge[d] of course with any homicide… and I dismiss any suggestion, veiled or otherwise, that there was something sinister about your birth of the child and procuring its birth." Similarly, in Sally's case, it was not possible to tell how the babies had died and the judge made clear in sentencing that she had not been convicted of a homicide offence. However, an obstetrician who gave written evidence as an expert witness noted that it was unusual for a woman to experience four stillbirths after giving birth to other live born children. Consequently, while the death of the infants was not a factor of her conviction, there may have been a belief that she could have been responsible for the death of the children.

In Hannah's case, the suspicion of responsibility for the death of the child is more apparent, as she was initially arrested for murder and was convicted of child cruelty. Consequently, concealment was not needed to act as a proxy for homicide. A very subtle suggestion is made by the prosecution, presenting evidence from a consultant neonatologist, that while the cause of the baby's death was unascertained, it was nevertheless unusual and thus perhaps suspicious, "He stated in his evidence that the sudden unexplained collapse in the early period after birth in a well infant, born full-term, as this child was, is rare". Despite noting

that Hannah had claimed to have passed-out, an experience of other women following giving birth alone (Oberman 1996), no reference was made to this possibility by the prosecution barrister as they concluded their case,

> She sought no assistance with the birth as she sought to keep it a secret. She sought no assistance for the newborn child and it died without any attempt, it would appear, by the defendant to give it the care the child required.

In her defence, Hannah's barrister reminded the court of Hannah's claim to have been unconscious,

> What is apparent from what the defendant said to those tending to her upon her arrest was that… she did make it plain to those who were speaking to her, and again without the benefit then of any legal advice telling her that this was a smart thing to say, she told the nurses when she was first spoken to that very shortly after giving birth and cutting the umbilical cord in her own bedroom, that she passed out. She doesn't know how long she was unconscious for and it may well be that when she came round the child was already dead. We simply don't know. And again, I invite your Honour to bear that in mind.

Dispute over Hannah's consciousness at the time of the child's death is of importance due to the implication it could have had upon sentencing, with the judge concluding, "it is still a mystery perhaps as to the course of action that you took following her birth". However, as Hannah pleaded guilty to the charges, there was no need for the prosecution to prove Hannah's consciousness and thus culpability for the death of the child; the implication given is either that they do not believe she had been unconscious, or that her duty towards the child was such that she should not have allowed herself to be in a position whereby the child could have been left without care post-birth. This would have

required Hannah to anticipate the delivery and postpartum unconsciousness (discussed below).

Nevertheless, a further query exists as to the inclusion of concealment on the indictment. The context of Hannah's abandonment of the child's body meant concealment had not, technically, been committed as the body had been easily found,[31] as the prosecution reported,

> [Name] left his house twice on the morning of [date], and on the second occasion glanced to his left and saw a small bundle which at that time looked to him simply like some rubbish. It was in the farthest corner of that small garden near the wall, and when he approached it he saw it was a body of a newborn child.

In Hannah's case, the prosecutors may have used concealment to ensure a conviction was secured in case the main offence suspected to have been committed was unsuccessfully prosecuted. Such practice by the Crown reflects the historic practice in concealment convictions whereby women were charged with concealment and murder in the hope that concealment would be obtained if the murder charge was dropped or if the defendant was found not guilty of murder (Higginbotham 1989).

The similarity between the three cases is that each woman had been suspected of being responsible for the death of their infants. In each case, the evidence available prevents homicide from being proven; while the offence of concealment remains relatively easy to prove. Suggestions in court that the women may have killed their children indicates that the offence of concealment was used to facilitate convictions where none might otherwise have been

[31] *R* v *Clark* [1883] 15 Cox CC 171.

possible. Use of the offence in this manner challenges the presumption of innocence;[32] a point made by Williams (1958) in his critique of the offence published fifty years ago. Furthermore, if a homicide offence is suspected, but unproven, and concealment is used instead, then the offence the defendant is convicted of, and thus the label of offending prescribed, does not match their suspected behaviour.[33] Davies (1937 216) also made this point, characterising the offence as "perpetuat[ing] the 'mischief' of defeating the law of homicide", and similar views were expressed by members of the judiciary during the Victorian period (Higginbotham 1989).

Employing offences that are easier to prove than the offence believed to have been committed is neither unusual nor, arguably, uncontroversial within criminal justice practice.[34] However, the significance of the use of concealment lies in its historic legacy, as analysed above, and the connection to newborn child death and crisis pregnancy. These aspects make concealment a form of gendered injustice. The offence is not itself gendered in that it can be committed by anyone; however, the nature and context of a crisis pregnancy are such that the experiences that could lead to the offence of concealment being committed are overwhelmingly reserved for women. It is women who bear children,[35] and when a pregnancy causes a crisis to a woman, it is very likely that it will be that woman who will find a means of coping with the difficulties of that crisis. Concealment as gendered injustice is explored in the next section.

[32] *Woolmington v DPP* [1935] AC 462; [1936] 25 Cr App R 72, at 95. European Convention on Human Rights, Art 6(2).

[33] Jones and Quigley (2016) make this point in relation to the offence of preventing lawful and decent burial, which they argue has also been used to criminalise suspected but unproven homicide.

[34] However, it does come with its difficulties, as argued by McGlynn et al. (2017) in their analysis of using voyeurism laws to facilitate prosecution of defendants engaged in revenge porn.

[35] This point is made with full awareness that gender is performative (Butler 2010), and that people who identify as male, or do not prescribe to the gender binary, can and do become pregnant (Halberstam 2010).

Concealment as Gendered (In)justice

The principle that the criminal justice system operates on the basis of gender, among other intersecting identities (Crenshaw 1989), and that criminal law is written with the white, middle-class man in mind, has been the subject of much feminist examination of law, crime and deviance. There is substantial evidence from feminist scholarship that women who are sanctioned for breaking the law are punished as much for who they are (a woman), as for what they do (Barlow 2016; Carlen 1983; Fitz-Gibbon and Vannier 2017; Hodgson 2017; Lloyd 1995). The dated, yet pertinent, study by Eaton (1986) offers an example of gendered justice. Eaton analysed magistrates' sentencing decisions, examining the professional representations of men and women defendants. She concluded that not only were representations gendered but, in portraying women, narratives were constructed based on traditional perceptions of family life and of feminine behaviour. Such findings continue to be reflected in contemporary studies examining responses to women who break the law, with most recent research focusing on women who commit serious and violent offences. For example, in analysis of women convicted of offences relating to the killing of their children, Weare (2016) argues that, in the courtroom, narratives are constructed about women defendants by drawing on traditional gender roles to explain their behaviour within the frames of the 'good' mother. The more a woman's behaviour departs from idealised images of femininity and motherhood, the more stringently her behaviour is judged.[36] Such narratives are compelling, as a conviction for criminal offending is a relatively unusual occurrence for women compared to that of men. Women commit fewer crimes than men, and their offending is generally less serious in nature and consequence (Milne and Turton 2018). As such, crime is most often seen as a male and masculine act (Ballinger 2000), therefore women who offend are seen as the 'other' (Barlow 2016).

[36] See further Edwards (1984).

However, justice, as a gendered experience, is more than the judgements made against individual women for their behaviour within the context of social expectations of appropriation to femininity. As scholars of feminist jurisprudence have outlined, the law and criminal justice processes are dominated by men in both development and application, and so women are judged by the 'norm' of male behaviour (Smart 1992; Lacey 1998; MacKinnon 2005). As Naffine (1990 100) argues, the standard of behaviour used to measure criminal liability is an 'ideal type' who "possesses at least three essential qualities which match those of the socially powerful" – a middle-class man who evinces the style of masculinity of the middle-class. An intersectional analysis would add being of white race to this list (Hudson 2006). The nature of the ideal legal subject is that few men and fewer women are as "materially and culturally advantaged as the man of law" (Naffine 1990, 120), but, due to the sexual and economic divisions of labour, more men than women will be able to appropriate the way of life and qualities of the 'ideal type'. It is against this idealised standard of life, and consequential behaviour, that all peoples are judged within law; as, to be seen to be a fair, impartial, non-arbitrary and universal system, a universal person must be invoked, often described as the 'rational man'.

For women who experience a crisis pregnancy, the assessment of their behaviour next to a standard of the 'rational man' results in some troublesome outcomes in terms of the judgements made in relation to their perceived deviant behaviour. Evidence from the three case studies illustrates how expectations of idealised femininity were used to measure the behaviour of the defendants. Such expectations can be identified as the rational man's perception of how women should act. Evidence from the cases illustrates that members of the court held expectations that this was how the women should have behaved. Little to no consideration was given to the question as to why the defendants may not have behaved in these ways; neither did any of the court actors attempt to challenge the gendered assumptions that shroud the

expectations. Considering the vulnerabilities of the women in these cases, and women who experience crisis pregnancies in general, using the principles of the 'rational man' to assess and evaluate the defendants' behaviours would seem to be unjust – failing to consider the wider complexities that surround crisis pregnancy and pregnancy in general.

Use of gendered narratives to assess women's behaviour is neither new to the offence of concealment, as argued above, nor to women's experience of justice and the law more broadly. However, what the cases of concealment analysed here demonstrate is the extent to which narratives around pregnancy, which is expected of all women rather than just these defendants, transcend daily life, and are perpetuated within the courtroom and the judgements of 'deviant' pregnant women and mothers.

Expectations of Pregnant Women in Concealment Cases

Within the cases of concealment analysed here, the behaviour of the women is assessed next to ideals of motherhood. Feminists have long identified motherhood as one of the key markers of femininity; a socially and culturally organised role which women are expected to adhere to and perform in a certain way (Oakley 1974; Glenn et al. 1994).[37] As Douglas and Michaels (2005, 3-4) argue,

> …no woman is truly complete or fulfilled unless she has kids, that women remain the best primary caretakers of children, and that to be a remotely decent mother, a woman has to devote her entire physical, psychological, emotional, and intellectual being, 24/7, to her children.

[37] This does not refer to the biological function of bearing and caring for a child, but how society has interpreted and given meaning to the activity (Arendell 2000).

The myths of motherhood now extend to the period before the child is born, and prior to conception, with the notion of a woman being 'pregnancy-ready' (Williams 2016). Women are expected to be responsible for the wellbeing of the foetus and actively manage their behaviour to ensure that their unborn child has the optimum environment in which to grow and experience birth (Ruhl 1999; Lupton 2012; Weir 2006). This includes monitoring what is eaten and drunk (no rare beef or alcohol, for example), what conduct is completed in terms of physical and mental wellbeing, attending regular medical appointments, and conforming to medical advice and guidance. Strong links are made between the concept of the 'responsible' pregnant woman and the 'good' mother. Lupton (2011) concludes that the pressure on women to conform to dominant ideals presented in the discourse of maternal responsibility is inextricably linked to the principle of the 'responsible mother' who puts the needs of her foetus and child first.

Such perceptions of motherhood were apparent in the sentencing hearings of the three women. Each woman was judged in terms of her behaviour as a mother and conclusions of these judgements appeared to assist in an assessment of the women's responsibility for the survival of their infants, and also in assessment of their characters in general. The importance of the women's roles as mothers is highlighted within these cases, as the defence and prosecution appear to fight over the defendants' representations as 'good' mothers. In Lily's case, the prosecution claimed that upon discovering she was pregnant Lily "told her GP that she did not want another child as she already had three boys with her ex-husband, and in particular she did not want another male child". The claim that Lily had been planning to terminate her pregnancy due to the sex of the child was strongly disputed by the defence:

Judge: The Prosecution suggestion is she did not want another boy.

Defence: Your Honour, she does not accept that…

Later in the hearing, after being challenged by the judge, the prosecution provided evidence that Lily's statement that she did not want any more boys was not in the context of seeking a termination; at the time of attempting to terminate the pregnancy, Lily did not know the sex of the baby. The prosecution offered an apology for this misrepresentation. The debate as to whether Lily wanted to terminate the pregnancy due to not wanting a boy indicates that such a reason for obtaining an abortion is perceived to be unacceptable. Stigma around abortion continues to be a factor for women when deciding to discontinue a pregnancy (Norris et al. 2011), and Sheldon (1993) has argued that, in English law, legal abortion is constructed under the principle that women cannot be trusted to have an abortion for the 'correct' reasons. Sheldon outlines that public focus on abortion has been strongly connected to the idea of a woman being a 'good' mother and that this frames her decision to end the pregnancy. The focus on this aspect of Lily's behaviour would suggest similar perceptions were held, and applied, in this case.

In mitigation, Lily's defence barrister drew on character references that indicated she was a good mother,

> … she went on to have two children, who your Honour will see from those letters she clearly presents as a good mother, she is involved in their lives and in the school life and is somebody who is thought well of by people within that local community… More to the point, in relation to the children, Social Services obviously became involved when her offending became known, but as your Honour will see from the pre-sentence report, they effectively have given her the all-clear... [38]

[38] The influence of Lily's abusive partner on her offending was perceived as further evidence of her good character.

The portrayal of Lily as a good mother was accepted by the judge, who noted in sentencing,

> …but what can be said is that you were already the mother of three children and you have cared for children subsequently and cared well.
>
> …you have two small children whom on the account of everyone you are… bringing up well.

A similar situation is presented in Hannah's case, where the prosecution and defence disputed whether Hannah was a 'good' mother. The prosecution's case was based on the principle that Hannah was guilty of the offences charged because she had not wanted to be a mother and therefore had failed to act to save the child's life,

> The Crown's case is that she had made it plain she didn't want the child and that she could not have a child out of wedlock. She told no one for those reasons. She sought no assistance with the birth as she sought to keep it a secret. She sought no assistance for the newborn child and it died without any attempt, it would appear, by the defendant to give it the care the child required.

In presenting this case, the prosecution made no reference to Hannah's claim that she had fallen unconscious after the birth and that the child had already died by the time she awoke. As well as presenting Hannah as rejecting motherhood, the prosecution repeatedly focused on a number of Hannah's other behaviours which can be interpreted as unmotherly, "It would appear no attempt was seemingly made to resuscitate the child, and after its death the defendant disposed of the body at her friend's house". Comments are also made about Hannah having gone out with her family approximately 3 to 4 hours after the death of the child, "…yet it is clear from the evidence that she went out with her family, as I have indicated, at about 8pm that night for a short time before returning home upset"; and that she had returned to work the next day,

> [Employer] had no idea that the defendant was ever pregnant and indeed saw the defendant as usual on the [date] at work. This would be within something like 17 hours of the defendant having given birth, maybe 19 hours.

The prosecution also highlighted the circumstances in which Hannah left the body, "the birth fluids had not been washed off the child's body", and "It was lying, as I have indicated, near the wall, its head was lying on flagstones". The significance of mentioning each of these elements could be interpreted as attempts to indicate that this is not 'normal' motherly behaviour.

In Hannah's defence, her barrister also drew on ideas of motherly behaviour to justify her actions following the death of the child,

> But lest there be any misinterpretation about her behaviour, this is not, I would submit, before you a callous, hard-hearted individual who simply swept this aside and carried on as normal, because she is, after all, a grieving mother, this was her child and within two hours or so of giving birth her child had died…

Furthermore, the defence appear to be trying to equate Hannah's experience to that of other mothers,

> To say that she was physically and emotionally in shock after what had happened I suppose is an understatement. The physical and emotional trauma that any woman undergoes in childbirth is multiplied to an extent which we can't begin to imagine when that happens in isolation, in secret, contrary to all the beliefs that she has had from both sides of the family…

As both quotes indicate, the defence were attempting to make Hannah appear like any 'normal' mother, experiencing the grief that is expected when a child dies.

As access to the full transcript in Sally's case had not been granted, it is not possible to comment on how the prosecution and defence represented her in terms of her character or as a mother. However, what is clear from the sentencing remarks is the judge's suggestion that Sally's past behaviour indicated she was a person of dubious character, in terms of her relationships with men and subsequent pregnancies.

> You have one child by your first marriage which ended in 1982. You have two children by your second marriage which ended in about 1987. Thereafter you led what can only be referred to as a chaotic and dysfunctional lifestyle, in the course of which you became pregnant on a number of occasions.

Furthermore, the judge made reference to Sally's age being a mitigating factor, stating, "at your age there is no risk of any future similar activity". The judge was arguing that Sally's role as a mother was a key factor in her offending, and, as she could no longer bear children, her risk to further foetuses/children was removed.

However, in contrast to these negative representations of Sally as a mother, the judge also drew on ideals of motherhood when explaining other mitigating factors,

> You have had the trauma of suffering four stillborn deaths and have had to live with the consequences of those deaths and the concealment which must have caused you many anxious and distressing moments. With those remains being with you as close as your own bedroom there can't have been any closure for you in relation to any of those young children, and this is a matter which has gone and on for many, many years.

It is not possible to know whether the prosecution and/or defence used representations of motherhood to argue their positions, but presenting an experience of trauma as a mitigating factor suggests that this is the behaviour the court expects of mothers – that the death of a child

will be experienced as a traumatic loss. While research has been conducted into the experience of stillbirth on mothers (Mullan and Horton 2011; Murphy 2012), I am unaware of any that has considered the experience among women who conceal/deny their pregnancy. However, it appears that the court is of the opinion that grief and trauma is the 'normal' and 'motherly' response, regardless of the experience of pregnancy.

Judgement of Sally's behaviour goes beyond the debate as to whether she had responded as a 'good' mother and moves directly to address her behaviour during pregnancy. The judge expressed concern for the physical health of her unborn children due to Sally's actions, suggesting that she may have been culpable for her foetuses' inability to survive,

> …whilst the circumstances and reasons for the stillborn births will never fully be able to be established, your chaotic lifestyle choices, including alcohol abuse and promiscuity at the time of your pregnancies was such as to put the good health of any unborn child at risk.

Thus, in this case, it was not only suggested that Sally may have caused the death of these children if they had been live born (which, as outlined, was unprovable and was never formally raised as a charge), but also that she may have caused them to be stillborn due to her behaviour. Similarly, in Hannah's case, as well as the prosecution basing their case on Hannah not seeking assistance for the child because she had not wanted to be a mother, during sentencing the judge directly implied that she was responsible for the death of the child, "The tragedy that followed is of the immense disaster for this child. She died within two hours of her birth, and had you acted appropriately her life could have been saved". Such a comment was made despite both the prosecution and defence acknowledging that Hannah stated that she had passed out following the birth and no contrary evidence was offered. With this in mind, one reading of the judge's comment is that acting *appropriately* would have required Hannah to have informed

someone of her pregnancy, and, as a consequence, would have been unlikely to be in a position of giving birth alone and passing out, leaving the child unattended.

The broader suggestion being made in both Hannah and Sally's cases is that the women should have put the welfare of their foetuses before their own. Such focus on the women's behaviour in pregnancy is problematic for a number of reasons, not least because the offence of concealment is only concerned with the behaviour of the defendant after the child has been born and has died; although within the course of sentencing such evidence can be used to demonstrate moral character and thus justify the sentence. The suggestion that the women should put their foetuses' welfare before their own relates back to the ideology of motherhood, as I have outlined above. Expectation that women should put the foetus first is deeply problematic, but sadly an all too common experience for women; this is despite statutory and common law clearly indicating that a woman has no obligation or legal duty to her unborn child,[39] including her decision to seek and adhere to medical guidance and assistance during pregnancy and birth, as rulings in cases of non-consensual caesarean sections illustrate.[40] The courts continue to uphold the principle that "while pregnancy increases the personal responsibilities of a woman it does not diminish her entitlement to decide whether or not to undergo medical treatment" if she is of "sound mind".[41] Furthermore, historic legal authority clearly indicates that a woman has no obligation to obtain medical care during birth, and a woman will not be guilty of manslaughter if the baby dies at birth following the woman's

[39] *Re F* (In Utero) (Wardship) [1988] 2 FLR 307; *Criminal Injuries Compensation Authority v First-tier Tribunal (Social Entitlement Chamber) (British Pregnancy Advisory Service and others intervening)* [2014] EWCA Civ 1554.

[40] *St. George's Healthcare N.H.S. Trust v S and R v Collins and Others* [1999] Fam 26; [1998] 3 WLR 936.

[41] *Ibid*, at 950.

decision to deliver alone.[42] This is still the case, even if it can be proven that a woman was neglectful towards her unborn child.[43] The only criminal offence that can be committed against the foetus is child destruction, which prohibits the destruction of "the life of a child capable of being born alive… before it has an existence independent of its mother".[44] However, this offence requires intent to destroy the foetus and a wilful act; and so omissions and acts committed without intent to harm, such as consuming alcohol for pleasure and not with an intention to kill the foetus, or not obtaining medical assistance during pregnancy and labour, would not fall under the scope of the offence.

Despite legal protection of pregnant women's autonomy, maternal freedom is not always the normative experience, as there is substantial evidence that women's rights during pregnancy, labour and delivery are regularly infringed by 'obstetric hegemony' (Anderson 2004). For example, in their survey of women's experiences of childbirth, Birthrights (2013) found a mixed picture of maternity care across the UK, with only half of women agreeing they had the birth they wanted, indicating lack of choice, and only 57% of women reporting they felt in control of their birth. These findings support other research, from the UK and other countries, that indicates there is a conflict between the woman's legal right to autonomy in birth and the role doctors and midwives feel they play in securing the welfare of the foetus (Baker et al. 2005; Kruske et al. 2013; Prochaska 2013). In such circumstances, the existence

[42] *R v Knight* [1860] 2 F&F 46.

[43] An offence of homicide only occurs if it is proven that the defendant was neglectful towards the child once it had been completely born and obtained legal personality, *R v Izod* [1904] 20 Cox CC 690. While not subject to criminal law, pre-birth neglect can result in child protection plans being implemented by the local authority (Masson and Dickens 2015).

[44] Infant Life (Preservation) Act 1929, s 1. Procuring a miscarriage criminalises the intentional ending of the pregnancy.

of ‘hard’ law protecting autonomy is negated, as women report feeling coerced and forced into making decisions against their wishes through the mechanisms of obstetric hegemony (Anderson 2004). As Rothman (1989) and Gregg (1995) argue, the increased ‘choice’ provided through developing technology and knowledge about pregnancy and childbirth has had the impact of limiting women’s freedom to ‘choose’; more pressure is placed on women to make decisions in line with what professionals feel are ‘correct’ and best practice, which effectively destroys the ideology of choice.

While such research is not informed by the experiences of women like Hannah, Lily and Sally, the evidence and narratives about motherhood presented in their court hearings reflect the thrust of perceptions that support obstetric hegemony and the role and responsibility of the ideal mother. By highlighting what are perceived to be failings of the women as *pregnant women*, the prosecution in these cases appear to indicate that the women’s culpabilities lay in their failure to act as suitable mothers and, by extension, women. While they were technically being sanctioned for hiding the dead body of the child, evidence from the transcripts would suggest that the courts were *as* concerned, if not *more* concerned, with the women’s acts of deviancy in relation to their failings in light of the ideals of motherhood. As such, it would appear that the offence of concealment provides an unofficial mechanism to punish women for such behaviour. As with unproven homicide, using the offence of concealment to sanction the behaviour of women that may have caused prenatal harm is a worrying extension of criminal law. Using concealment to display social displeasure moves beyond the scope of not only the concealment legislation, but also the long-held principles of the born alive rule, and directly challenges women’s rights to autonomy (Brazier 1999).

While use of the ideology of hegemonic obstetrics to assess the behaviour of women in the court room is deeply problematic when used to judge the qualities of any woman, it is specifically problematic in relation to the cases examined here, and other cases of concealment.

As noted, women who conceal/deny pregnancy which results in the death of the child, are likely to be experiencing a crisis pregnancy. As such, they are very likely to have significantly more vulnerabilities than the 'rational man' (Fineman 2008), as in the cases presented here. And yet, their behaviour is judged against the ideals of motherhood – the woman who can and will readily conform to what is perceived to be best for baby – to follow all medical advice and put the needs of the foetus first. The analysis presented here has consequences for the fairness and impartiality of law. As Naffine (1990 123) argues, to question the status of the legal subject against whom we are all judged is to "question, at a most fundamental level, the fairness and therefore the justice of law".

Conclusion: What Next for Concealment of Birth

With consideration of the problematic nature of the offence of concealment, I will conclude by examining the future for this 'stop-gap' in English law. In doing so, it is important to note that the offence can and does fulfil a function for law enforcers, as evident in continued use of the offence. In the cases examined here, the women exhibited behaviour that is widely understood to be wrong or deviant, beyond suspected but unproven homicide, and failings as a mother; both of which I have argued should not be the focus of criminal sanction. However, the other illegal behaviours exhibited by the women are captured by alternative offences and therefore concealment is not required as an offence to punish these wrongs; specifically, the inappropriate disposal of a body,[45] and failure to register a birth or stillbirth.[46] The most serious consequence of the behaviour of the women convicted of concealment is that their actions have prevented an investigation into the cause of death of the infants, potentially preventing law

[45] Jones and Quigley (2016) outline the wrongfulness of inappropriate disposal of a body, and the criminal offences that capture this wrongful behaviour.

[46] Births and Deaths Registration Act 1953, ss 1-2 and 36, punishable by a fine of up to £200.

enforcers from determining that the child had been a victim of homicide. The judge raised this point in Lily's case during sentencing, "These offences… [are] serious because it means that the authorities can never establish in circumstances such as this what has happened to the child, and that is something that everybody is entitled to know..." However, as Jones and Quigley (2016) have argued in relation to a similar offence preventing a lawful and decent burial, other offences exist to capture the wrong-doing of hiding a corpse to prevent discovery of further criminal behaviour; disposal of a corpse with intent to obstruct or prevent a coroner's inquest when there is a duty to hold one,[47] and perverting the course of justice:[48] both have a maximum life sentence. Therefore, the offence of concealment is not needed to capture the wrong of hiding a dead body to conceal criminal behaviour and to facilitate prosecution; however, it should be noted that concealment would be far easier to prove than either of the alternative offences.

Considering the gendered injustice of concealment, as outlined above, and that other offences exist to capture the wrongs of the behaviour, I conclude that there is no place for the offence of concealment, and it should be removed from criminal law. The statute is an archaic provision; a product of the nineteenth century, reflecting the values of that time in relation to women's sexuality and their positions as mothers and wives, specifically as pregnant single women. Analysis of recent cases illustrates that the offence continues to be used in line with misogynistic expectations of women's behaviours in relation to motherhood and pregnancy. Analysis of concealment, presented here, speaks to a wider debate surrounding women's rights to control their own bodies, particularly in relation to sexual activity and pregnancy. Abortion remains a criminal offence (Sheldon 2016), and recent civil court cases would suggest there is

[47] *R v Purcy* [1934] 24 Cr. App. R. 70.

[48] *R v Williams* [1991] 92 Cr App R 158. See Jones and Quigley (2016) for detailed analysis of how both offences could be applied to individuals who conceal a dead body.

a creep towards the sanctioning of women for 'inappropriate' conduct while pregnant.[49] Critiques of offences, such as concealment, are important for women's equality and rights to freedom and autonomy. As evidenced here, through a feminist analysis of how law is applied, it is possible to identify the structural prejudices that exist within law, and how they impact not only those directly involved in cases, but all women, due to the challenges such legal action poses to women's rights to bodily autonomy and reproductive freedom.

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[49] *Supra* n 39.

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